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September 19, 2002

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**VIA HAND DELIVERY**

SEP 19 2002

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

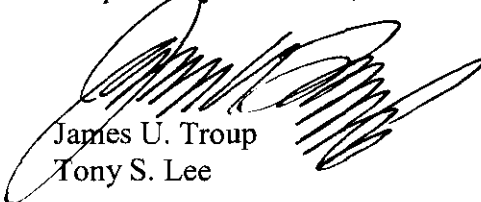
Re: Elkhart Telephone Co., d/b/a Epic Touch Co.  
Reply to Comments Filed by National Emergency Number Association et al.  
CC Docket No. 94-102

Dear Ms. Dortch:

On behalf of Elkhart Telephone Co., d/b/a Epic Touch Co. ("Epic Touch"), transmitted herewith are an original and four (4) copies of Epic Touch's Reply to the Comments filed in the above-referenced proceeding by the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc., and the National Association of State 9-1-1 Administrators.

Please acknowledge this filing by date-stamping and returning the extra copy of this submission included for this purpose. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

  
James U. Troup  
Tony S. Lee

Counsel for Elkhart Telephone Co. d/b/a  
Epic Touch Co.

Enclosures

cc: Lawrence Clance (FCC)  
Jennifer Tomchin (FCC)  
Trent Boaldin

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

SEP 19 2002

In the Matter of )  
 )  
Revision of the Commission's Rules to Ensure )  
Compatibility with Enhanced 911 Emergency ) CC Docket No. 94-102  
Calling Systems )  
 )  
Phase II Compliance Deadline for Non- )  
Nationwide CMRS Carriers )  
\_\_\_\_\_ )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY COMMENTS**

Elkhart Telephone Co., d/b/a Epic Touch Co. ("Epic Touch"), by its undersigned attorneys, hereby submits its reply to the comments filed by the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, Inc., and the National Association of State 9-1-1 Administrators (collectively, "Public Safety Organizations") on September 11, 2002, in which they urge the Commission to refer, among others, Epic Touch's request for stay of the FCC's E911 Phase II deadlines to the Enforcement Bureau to explain its delay, and presumably for further enforcement action.<sup>1</sup> The company respectfully submits that the Public Safety Organizations' comments are misplaced as applied to Epic Touch, and the actions they recommend would harm carriers with the least resources under circumstances that most clearly warrant a stay.

In support hereof, the following is respectfully shown:

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<sup>1</sup> Comments of Public Safety Organizations at 2.

## **I. BACKGROUND**

By way of background, and in supplement to the information previously provided to the Commission in its Petition for Stay, Epic Touch states that it is a small, new market entrant licensed to provide PCS service in rural areas in Kansas and Oklahoma. Epic Touch is a family-owned and operated company that is dedicated to providing high-quality and innovative wireless services to surrounding neighborhoods and communities that would otherwise be largely overlooked or bypassed by larger carriers. The company does not have access to the financial resources of Tier I, Tier II, or even the larger Tier III carriers, and it needs to use its limited resources to build its nascent network.

Epic Touch files this reply to the Public Safety Organizations' Comments because Epic Touch's circumstances warrant a stay of the Commission's E911 Phase II deadlines, and enforcement action by the Enforcement Bureau would have an adverse impact on the company's ability to continue its buildout to provide service to rural and farming communities located in Kansas and Oklahoma.

## **II. DISCUSSION**

### **A. Epic Touch has Good Cause for its Late-Filed Petition for Stay**

In their comments, the Public Safety Organizations state that they saw no reason to avoid referrals of smaller carriers to the Enforcement Bureau, particularly those whose late-filed requests are devoid of specific reasons for not acting earlier. Epic Touch is not one of those carriers that do not have sufficient cause for submitting a late-filed request for stay of the Commission's E911 Phase II deadlines. As discussed further in its Petition, Epic Touch explained that it had received assurances from manufacturers that location-capable handsets and related equipment would be available for the company to implement its handset-based automatic

location information (“ALI”) solution by the Commission’s deadline. However, in light of the misrepresentations made to Epic Touch by equipment manufacturers, the company recently decided to implement a network-based rather than a handset-based ALI solution, which precipitated the filing of its Petition for Stay of the Commission’s E911 Phase II rules.

Moreover, Epic Touch’s circumstances warrant a stay even more than those late-filing carriers the FCC found appropriate for inclusion in its *Order to Stay*. The FCC has granted a stay to carriers with far more financial resources and employees than Epic Touch. The cellular carriers that have been granted a stay have already constructed their networks, whereas Epic Touch is a new market entrant that is just now in the process of constructing its network. Regulatory requirements such as E911 and CALEA impose greater burdens on a small carrier that is trying to build its network than on carriers that do not have to simultaneously address all the problems that occur with the building of a new wireless system.

**B. The FCC Should Grant Epic Touch’s Petition Without Adverse Enforcement Action**

The Public Safety Organizations acknowledge that several carriers waited until after the FCC’s November 30, 2001 deadline for small and mid-sized carriers to file requests for relief from the Commission’s E911 Phase II deadlines, but were still allowed to benefit from the Commission’s grant of a stay.<sup>2</sup> Their comments are meant to distinguish “tardy filers who were lucky enough to secure FCC action from those who were not.”<sup>3</sup>

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<sup>2</sup> The following carriers submitted late-filed requests for waiver of the Commission’s E911 Phase II deadlines, yet were still covered by the *Order to Stay*: BRK Wireless, Inc. d/b/a Amica Wireless Phone Service, Inc. (filed 12/5/01); Eagle Telephone System, Inc. (filed 5/31/02); Iowa RSA 2 Limited Partnership (filed 6/27/02); MP Communications Partners, L.P. (filed 2/11/02); Northern New Mexico Telecom, Inc. (filed 1/17/02). *Order to Stay* at Appendix A.

<sup>3</sup> Comments of Public Safety Organizations at n.4.

The Commission's decision whether to refer a carrier to the Enforcement Bureau for investigation as a result of its late-filed request for stay of its E911 Phase II obligations should not be based on whether a carrier was "lucky enough" to have submitted its request by an arbitrary release date not previously known to the public. Rather, such decision should be based upon well-considered policy objectives that will serve the public interest without unduly delaying E911 Phase II implementation or harming small carriers that have limited access to capital resources. Indeed, in issuing its *Order to Stay*, the Commission found that small carriers have a legitimate need for a stay of its initial Phase II implementation deadlines, and saw no need for Enforcement Bureau action with respect to carriers that submitted late-filed requests for waiver of the Phase II rules.

Furthermore, in its *Order to Stay*, the FCC recognized the distinction between the larger non-nationwide carriers and Tier III carriers serving small rural markets. The Commission made this distinction in order to "distinguish between different classes of carriers in order to tailor the relief based on each carrier's resources."<sup>4</sup> The Commission recognized that "wireless carriers with relatively small customer bases are at a disadvantage,"<sup>5</sup> and therefore, require different relief under its rules. By granting Epic Touch's Petition without referral or adverse action by the Enforcement Bureau, the Commission will foster the underlying policy objectives outlined in its *Order to Stay* and grant appropriate relief to carriers with the least amount of resources.

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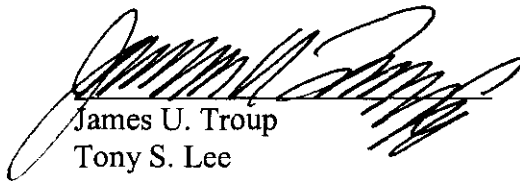
<sup>4</sup> *Order to Stay* at ¶ 19.

<sup>5</sup> *Id.* at ¶ 20.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should grant Epic Touch's Petition for Stay without referral or adverse action by the Enforcement Bureau. Epic Touch's circumstances are even more compelling than those late-filing carriers that have already been granted a stay of the E911 Phase II deadlines, and the Commission has granted a stay without imposing any liability or forfeiture upon such carriers. The FCC should not apply a "luck" standard in granting relief to some carriers while taking enforcement action against others that have shown good cause for a similar stay. To do so would create a regulatory scheme that is unsupportable by any rational test and harmful to the public interest.

Respectfully submitted,



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Counsel for Elkhart Telephone Co.  
d/b/a Epic Touch Co.

Dated: September 19, 2002

**CERTIFICATE OF SERVICE**

I, LaChonda A. Mackall, a secretary with the law firm McGuireWoods LLP, hereby certify under penalty of perjury that a true and correct copy of the foregoing Reply Comments was sent via first class mail to the following:

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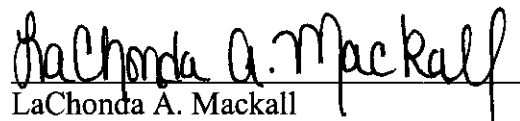
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